

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2263 - SB 2196

June 15, 2020

**SUMMARY OF ORIGINAL BILL:** Extends, from 30 days to 60 days, the period of time in which a physician accused of performing a partial birth abortion can delay the beginning of the trial in order to allow the state medical board to determine whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness or injury.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

**SUMMARY OF AMENDMENT (018382):** Deletes all language after the caption. Establishes that this new section governs abortion. Further establishes that Tenn. Code Ann. §§ 39-15-201, 39-15-211, and 39-15-212 should not be enforced unless this section is temporarily or permanently restrained, enjoined, or otherwise unenforceable and only in compliance with specific criteria.

Allows for an affirmative defense to any criminal prosecution if the abortion was performed or attempted by a licensed physician and the physician determined, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman or the physician performs or attempts to perform the abortion in the manner which, in the physician's good faith medical judgment, based upon the facts known to the physician at the time, provides the best opportunity for the unborn child to survive, unless in the physician's good faith medical judgment, termination of the pregnancy in that manner would pose a greater risk to the pregnant woman of death or substantial and irreversible impairment of a major bodily function.

Prohibits an abortion if performed on the basis of a claim or a diagnosis that the woman will engage in conduct that would result in her death or substantial and irreversible impairment of a major bodily function or for any reason relating to her mental health.

Prohibits any person from intentionally performing or inducing an abortion on a pregnant woman if the physician determines, in the physician's good faith medical judgment, that the unborn human individual the pregnant woman is carrying has a detectable heartbeat, or there is an otherwise viable pregnancy, determined according to standard medical practice, including, but not limited to, serial human chorionic gonadotropin (HCG) or:

- (1) A pregnancy is presumed to exist and to be viable upon finding the presence of HCG using a test that is consistent with standard medical practice.
- (2) A pregnancy is confirmed to be viable upon detection of a heartbeat in an unborn child using a test that is consistent with standard medical practice.
- (3) Once a pregnancy has been confirmed to be viable, the pregnancy is not viable only if a test that is consistent with standard medical practice indicates:
  - (A) Decreasing levels of HCG; and
  - (B) The absence of a heartbeat in an unborn child.

Except in a medical emergency, prohibits a physician from performing or inducing, or attempting to perform or induce, an abortion upon a pregnant woman, unless, prior to the performance or inducement of the abortion, or the attempt to perform or induce the abortion, the physician is required to determine the gestational age, inform the pregnant woman the gestation age, perform an ultrasound, auscultate the fetal heartbeat if audible, explain what is being depicted, display the ultrasound images, record in the pregnant women's medical record the presence or absence of the fetal heartbeat and the method used, date and time of the test, and the estimated gestational age, and obtain a signed certification from the pregnant woman.

Restates it is a Class C felony and requires the license of the physician to be revoked if an abortion is purposely performed, induced or attempted to perform or induce upon a women when the pregnancy is viable. Restates it is a Class A misdemeanor for violation of viability determination or failure to record the required information in the pregnant woman's medical record.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- No new prosecutions will occur or penalties will be issued from the restatement of the current Class C felony or Class A misdemeanor in the proposed legislation. Therefore, any impact to incarcerations is considered not significant.
- Based on information previously provided by the Department of Finance and Administration, Division of Benefits Administration (Benefits Administration), the proposed legislation may result in an increase in ultrasounds; however, it is assumed they will meet Benefits Administration's carrier's medical necessity requirement and will not significantly impact any managed-care plans for employees of state government, local government, or local education agencies.
- Based on information previously provided by the Division of TennCare (Division), abortions are only covered under emergent circumstances; therefore, any fiscal impact to the Division is estimated to be not significant.
- The DOH can create and distribute the required form utilizing existing resources; therefore, any fiscal impact is estimated to be not significant.

- Any necessary rule changes by boards under the Division of Health Related Boards can be accommodated within the appropriate board's regularly-scheduled meetings at no additional cost.
- Based on information previously provided by the Administrative Office of the Courts, the proposed legislation will not result in a significant increase in caseloads for the state and local courts. Any increase in expenditures will be absorbed within existing state and local resources.
- The proposed legislation will not have a significant impact on the programs or policies of the DCS; therefore, any fiscal impact is estimated to be not significant.
- Pursuant to Tenn. Code Ann. § 4-29-121, all health related boards are required to be self-supporting over a two-year period. The Board of Medical Examiners had an annual deficit of \$231,445 in FY17-18, an annual deficit of \$346,206 in FY18-19, and a cumulative reserve balance of \$1,962,320 on June 30, 2019.

### **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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